IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8989 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JINABHAI NAGJIBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8989 of 2003

MR SUNIL C PATEL for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner, who is father of the detenu, has challenged the order of detention passed against detenu - Chandu

Bhagat Jinabhai Kataria by the Police Commissioner, Surat City on 11.9.2002 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short). The detenu was branded as "dangerous person".

The grounds served upon the detenu and placed on record reveal that the detaining authority took into consideration the fact that in all three offences came to be registered against the detenu on 4.9.2001, 16.11.2001 and 12.7.2002 for the theft of two wheelers and Television under sec. 379 of IPC. The detaining authority also took into consideration two in-camera statements recorded by the sponsoring authority on 29.8.2002 and 30.8.2002 as verified by the detaining authority on 7.9.2002 revealing the incidents of 23.6.2002 and 7.7.2002. From the above material, the order impugned came to be passed by the detaining authority.

Heard ld. advocate Mr SC Patel for the petitioner and Ms. Panchal ld. AGP for the respondent at length. The affidavit in reply filed by the detaining authority as placed on record is also taken into consideration.

Out of various contentions raised and controverted by the ld. AGP, it appears that the petitioner can be disposed of on the ground whether there was sufficient material before the detaining authority to reach to subjective satisfaction as to disturbance of public order. In this respect, perusing the record, it is revealed that three crimes registered against the detenu under sec. 379 of IPC for the theft of two wheelers vehicles and one Television can hardly be said to be the activities prejudicial to the maintenance of public order. While taking into consideration the fact of two in-camera statements, it is clearly revealed that those two incidents appears more to be individually disputes picked up by the detenu instead of objectional activities to the extent to be prejudicial to the maintenance of public order. The incidents of 23.6.2002 reveals that the witness with his rickshaw was standing at a place and the detenu demanded the amount of petrol from the witness. ON refusal, the witness was beaten though the crowd was gathered but the detenu and his associates created terror and fear amongst the crowd so the crowd was disbursed. The incident occurred on 7.7.2002, indicates that while the witness was doing his business, the detenu approached him on one Hero Honda motor-cycle with his associates and demanded Rs. 3000/in lieu of Hero Honda motor cycle. On belief that the motor

cycle might be stolen property, the witness refused the deal. The detenu tried to extract money from the cash box of the witness and on refusal, the witness was beaten, again though crowd was gathered but was disbursed on account of terror and fear of the detenu and his associates. This objectional activities of the detenu can hardly be said to be disturbing the public order. If the facts are taken on its face value, at the most these activities can be taken care of by the maintenance of law and order. Consequently, there was no material at all before the detaining authority to reach to a subjective satisfaction that by the objectional activities of the detenu, the public order was disturbed. The impugned order in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 11.9.2002 by the Police Commissioner, Surat city under the PASA Act against the detenu is quashed and set aside. The detenu- Chandu Bhagat Jinabhai Kataria is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs. DS Permitted.

(J.R. VORA, J.)

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